

~~FB~~
RETURNED

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

APR 26 2008
MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

James G. Turner-El,
Plaintiff- Petitioner,

-v-

Donald A. Nulick, Warden,
Defendant- Respondent.

Illinois State Indictment No.
81 C 9133

FILED

No. 08 c 2264

To Honorable
Chief Judge of the Court

MICHAEL W. DOBBINS
CLERK, U.S. DISTRICT COURT

**MOTION TO HOLD HABEAS CORPUS PETITION IN ABEYANCE
PENDING ILLINOIS SUPREME COURT'S DETERMINATION
OF LATE NOTICE OF APPEAL**

COME NOW plaintiff- petitioner James G. Turner-El, pro se, and respectfully move this Honorable Court to enter an Order to hold federal Habeas proceedings in abeyance pending determination by the Illinois Supreme Court of his late Notice of Appeal.

IN SUPPORT, plaintiff- petitioner states:

1. That plaintiff- petitioner (hereinafter "petitioner") State Post- Conviction was denied May 10, 2006.
2. That petitioner prepared Motions for Appointment of Counsel; For Transmission of Record on Appeal, Application to Sue/ Defend As A Poor Person, Affidavit/ Notice/ Proof of Service, for filing Appeal, but, he inadvertently failed to include his Notice of Appeal; as such, when he mailed his documents to the Clerk of the Circuit Court of Cook County; same was promptly returned unfiled by the Court Clerk, May 27, 2006.

3. Upon receipt of his returned/unfiled documents petitioner promptly attached his Notice of Appeal and he remailed same to the Clerk of the Circuit Court (2) days before due date on June 8, 2006.

4. The Clerk of the Circuit Court processed the documents to the Clerk of the Appellate Court, who gave them to Judge McBride, who granted appeal and appointed the State Appellate Defender to represent the petitioner, on date of June 13 2006.

5. Appointed counsel immediately filed a Motion to dismiss appeal as untimely filed, to which (3) judges of the Court granted and dismissed appeal, on the date of January 25 2007.

6. Petitioner promptly filed his Petitioner for hearing or should he say (Rehearing), but, he never received any word from the Clerk of the Appellate Court. He filed/mailed documents on or about February 5 2007.

7. Having heard nothing for many months petitioner filed a Motion for Clarification on or about Dec. 15, 2007.

8. On or about Jan 8 2008, petitioner received a letter from the Clerk of the Appellate Court advising that his Petition for Rehearing was denied way back on March 8, 2007, and enclosed copy of Order dated March 8, 2007.

9. Due to fact, that (1 1/2) months had elapsed since denial of his appeal and his receipt of said denial, petitioner decided instead of taking a late Appeal to the Illinois Supreme Court to proceed to this Federal Court on Federal Habeas Petition, which he was forced to file late due to defendant Schorn librarian refusal to copy his pleadings and return to him by filing deadline.

10. However, petitioner has learned that by his foregoing taking appeal though late to the Illinois Supreme Court, that he would be in procedural default.

11. Accordingly, petitioner is taking a late Notice of Appeal to the Illinois Supreme Court, and he pray this Court hold his Habeas Petition in abeyance pending determination of the Illinois Supreme Court in regard to his late Notice of Appeal.*/ As such, Federal Habeas proceeding cannot be deemed untimely.

WHEREFORE DO HE PRAY,

Respectfully submitted,
James G. Turner Jr. ^{SP}
James G. Turner Jr.
*N. 01161
M.C.C.
P.O. Box 711
Menard, IL. 62261

*/ Late Notice of Appeal was mailed to Illinois Supreme Court April 28, 2008 and should be denied in 2 weeks or less.